

On June 21, 1934, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Blanton Co. of Delaware, a corporation trading as the Helena Cotton Oil Mill at Helena, Ark., alleging shipment by said company, in violation of the Food and Drugs Act on or about December 24, 1932, and June 9, 1933, from the State of Arkansas into the State of Missouri, of quantities of cottonseed meal which was misbranded. The article was labeled in part: (Tag) "Blanco Brand 43% Protein Cottonseed Meal \* \* \* Manufactured by Helena Cotton Oil Mill Helena, Ark., Guaranteed Analysis Crude Protein, not less than 43.00% \* \* \* Crude Fibre, not more than 11.00%."

The article was alleged to be adulterated in that the statements, "43% Protein \* \* \* Guaranteed Analysis Crude Protein, not less than 43.00%", with respect to both lots, and the statement, "Crude Fibre, not more than 11.00%", with respect to one lot, borne on the tags, were false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since both lots contained less than 43 percent of protein, and one lot contained more than 11 percent of crude fiber.

On August 3, 1934, a plea of nolo contendere was entered on behalf of the defendant company, and the court imposed a fine of \$50.

M. L. WILSON, *Acting Secretary of Agriculture.*

**23864. Misbranding of canned red raspberries. U. S. v. Hunt Bros. Packing Co. Tried to the court. Judgment of guilty. Fine, \$30. (F. & D. no. 32101. Sample no. 42038.)**

Samples of canned red raspberries taken from the shipments involved in this case were found to contain less than 6 pounds 10 ounces, the weight declared on the label.

On June 16, 1934, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Hunt Bros. Packing Co., a corporation, Puyallup, Wash., alleging shipment by said company in violation of the Food and Drugs Act as amended, on or about April 8, 1933, from the State of Washington into the State of Wyoming, of a quantity of canned red raspberries which were misbranded.

The article was alleged to be misbranded in that the statement "Contents 6 Lbs. 10 Oz.", borne on the can label, was false and misleading and for the further reason that it was labeled so as to deceive and mislead the purchaser, since the cans contained less than 6 pounds 10 ounces of the article. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the container.

On December 28, 1934, the case came on for trial by stipulation of the respective parties by their respective attorneys before the court without a jury, the plaintiff having submitted its cause upon said written stipulation; and the defendant, in addition to the facts stipulated, having adduced evidence denying part of count 1 as follows:

"Said article was further misbranded in that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of said cans contained 6 pounds 10 ounces of the article; whereas in truth and in fact, each of said cans did not contain 6 pounds 10 ounces of the article, but did contain a less amount."

The case was then submitted to the court, and the court being fully advised in the premises, made the following findings of fact:

✓ I. That Hunt Brothers Packing Company, a corporation organized and existing under the laws of the State of Delaware, and having a place of business in the City of Puyallup, State of Washington, did, within the Southern Division of the Western Judicial District of Washington, and within the jurisdiction of this court, on or about the 8th day of April, the year of our Lord nineteen hundred and thirty-three, then and there, in violation of the act of Congress of June 30, 1906 (known as the Food and Drugs Act, 34 Statutes at Large, 768; Secs. 9 & 10, Title 21, U. S. C. A.) unlawfully ship and deliver for shipment from the City of Puyallup, State of Washington, to the City of Cheyenne, State of Wyoming, consigned to Paxton & Gallagher Co., a certain consignment, to wit, a number of cans, each can containing an article designed and intended to be used as an article of food, which said cans were, then and

there, denominated as to the contents thereof and labeled, marked, and branded as follows, to wit:

"P and G Contents 6 Lbs. 10 Oz. Red Raspberries Packed for Paxton and Gallagher Co. Omaha"

That said article of food, when shipped and delivered for shipment as aforesaid, was then and there misbranded within the meaning of said act of Congress, in that the statement, to wit, "Contents 6 Lbs. 10 Oz.", borne on the label attached to the case containing the article, regarding the article, was false and misleading, in this, that it represented that each of said cans contained 6 pounds 10 ounces of the article; whereas in truth and in fact, each of said cans did not contain 6 pounds 10 ounces of the article, but did contain a less amount.

II. That one George T. Daughters, an employee in the Food and Drug Administration of the Department of Agriculture of the United States, weighed at the premises of Paxton & Gallagher Co., at Cheyenne, Wyoming, sixty cans of the shipment aforementioned. That the average weight as found by said Daughters of the sixty cans was 6 lbs. 8.4 ozs. The two lowest net weights were 6 lbs. 7.49 ozs. and 6 lbs. 7.48 ozs., respectively. That the label on the cans as aforementioned designated the net contents of said cans to be 6 lbs. 10 ozs.

III. That on the 25th day of June, nineteen hundred and thirty-two, a criminal information was filed in the District Court of the United States for District of Oregon, charging the defendant herein with having shipped and delivered for shipment on or about October 21, November 12, December 11, 1930, and January 5, 1931, from the State of Oregon, into the States of Kansas, South Dakota, Oklahoma, and California, in violation of said act of Congress of June 30, 1906, an article of food, to wit, canned prunes, which were then and there adulterated within the meaning of said act.

That on the 25th day of June, nineteen hundred and thirty-two, in said court, the defendant pleaded guilty to the information so filed, was adjudged guilty, convicted, and was fined \$100, all of which will more fully and at large appear by reference to record of criminal proceedings No. C-13728, instituted at the March, 1932, term of court.

IV. The court further finds that the labels placed upon said merchandise named in the information in this action were furnished by the purchaser, to wit, Paxton & Gallagher Co. That the defendant, through mistake or error on the part of some one of its employees in not discovering that said labels did not bear the correct weight for said cans, placed said labels upon said cans.

V. The court further finds that there was no intention on the part of the defendant to violate the Food and Drugs Acts as alleged in the information.

The court, having entered its findings of fact, concluded as follows:

I. That intent, or wilful misbranding of the containers mentioned in the information in this case, is not a necessary allegation for a conviction of violation of the Food and Drugs Act.

II. That the defendant is guilty of both counts contained in the information and should be fined fifteen dollars (\$15) on each of the counts contained in the information together with the costs of prosecution to be taxed according to law.

M. L. WILSON, *Acting Secretary of Agriculture.*

**23865. Adulteration of canned salmon. U. S. v. Alaska Year Round Canneries Co. Plea of guilty. Fine, \$300 and costs. (F. & D. no. 32113. Sample nos. 55278-A, 55279-A, 55287-A, 55288-A.)**

This case was based on shipments of canned salmon, samples of which were found to be tainted or stale.

On June 25, 1934, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Alaska Year Round Canneries Co., a corporation, Seattle, Wash., alleging shipment by said company in violation of the Food and Drugs Act, on or about July 15 and July 23, 1933, from Seldivia, Alaska, into the State of Washington, of quantities of canned salmon which was adulterated. The article was labeled in part: (Cases) "Alaska Brand Salmon Red A Y R Co."

The article was alleged to be adulterated in that it consisted in whole and in part of a decomposed animal substance.

On November 12, 1934, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$300 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*